

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 17**

KANSAS CITY, KANSAS

C.A.R. TRANSPORT, INC.

Employer

and

Case 17-RC-12659

International Brotherhood of Teamsters,  
Local No. 41

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on April 22 and April 27, 2010, before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine whether the petitioned for single-facility unit consisting of drivers employed at the Employer's terminal in Kansas City, Kansas is appropriate, or whether a multiple-facility unit that combines the Employer's Kansas City drivers with drivers employed at the Employer's two terminals in Texas is the only appropriate unit.<sup>1</sup>

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<sup>1</sup> Upon review of the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. Commerce facts: The Employer, C.A.R. Transport, Inc. is a Texas, Corporation headquartered in Burleson, Texas and has a place of business located in Kansas City, Kansas where it operates a trucking terminal for transporting automobiles. During the past twelve (12) months, the Employer derived gross revenues in excess of \$50,000 for the transportation of automobiles from the State of Kansas directly to points outside the State of Kansas. During the same time period, the Employer performed services valued in excess of \$50,000 in States other than the State of Kansas.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
- e. The Employer has filed a Motion for Post Hearing Transfer and Consolidation, which is denied. This Motion was previously denied by Region 16 of the National Labor Relations Board in its April 29, 2010 Decision and Direction of Election in Case 16-RC-10933 finding a unit of drivers employed at the Employer's Houston, Texas terminal to be appropriate.

**I. DECISION**

Based upon the record as a whole, a review of the parties' briefs, and the application of relevant case law, I find that the petitioned-for single facility unit is appropriate and I will direct an election therein.

Accordingly, the following employees of the Employer employed at its Kansas City, Kansas facility constitute a unit appropriate for the purpose of collective bargaining with in the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers employed by the Employer at its facility located at 301 South 51<sup>st</sup> Street, Kansas City, Kansas but EXCLUDING all independent contractors and owner operators, office clerical employees, professional employees, dispatchers, guards and supervisors as defined in the Act, as amended, and all other employees.

There are approximately 24 drivers employed by the Employer in the unit found appropriate herein.

**II. ISSUE**

The Petitioner seeks a unit of the Employer's drivers working out of the Employer's Kansas City, Kansas facility. The Employer, on the other hand, asserts that the single-facility unit sought by the Petitioner is not appropriate, and that only a multiple-facility unit, which would include the all drivers employed by the Employer at its Kansas City, Kansas, Houston, Texas, and Burleson, Texas facilities is appropriate.

**III. STATEMENT OF FACTS****A. Overview of Operations**

The Employer is a Texas corporation engaged in the transportation and delivery of automobiles from railroad terminals and auctions to dealers and other wholesale purchasers throughout the Midwest and Southern United States. The Employer employs employees at

terminals located in Kansas City, Kansas, in Houston, Texas and in Burleson, Texas, and maintains its corporate offices in Burleson.

The bulk of the Employer's business consists of the transportation of new vehicles from terminals and rail yards to its car dealership customers. Each of the Employer's three facilities services distinct "new car" customers or dealerships within a defined region. Kansas City services Mazda, Honda, Mitsubishi and Suzuki dealerships. Houston services Nissan, Honda, Mitsubishi and Suzuki dealerships. Burleson services Nissan and Mitsubishi dealerships. In addition to the delivery of new cars, the Employer's facilities deliver "auction cars" from auction sites to dealership customers. Auction work accounts for about 5% to 20% of the Employer's business.<sup>2</sup>

In the transportation and delivery of vehicles, the Employer utilizes two types of trucks; big rigs and flat beds. Big rigs are double-decker trailers which can accommodate as many as nine vehicles. Flat beds are single bed trailers which can accommodate three to four vehicles. Kansas City employs only big rig drivers while Houston and Burleson employ both big rig and flat bed drivers.

#### B. Employee Contact and Interchange

In the performance of their daily driving duties there is scant evidence that the drivers from the Kansas City facility have any meaningful contact with drivers from the Employer's Houston or Burleson facilities. While drivers from the Employer's Kansas City facility may enter the same geographical area as drivers from the Houston or Burleson facilities, no evidence was adduced at hearing to show that drivers from the different facilities came into contact with one another, other

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<sup>2</sup> At hearing Employer's CEO John Hawkins testified that auction work accounts for approximately 20% of the Employer's business. Employer's Exhibit 15 would suggest, however that the actual number is far less than 20%. Moreover, driver testimony places this number at about 5%.

than rarely at an auction site.<sup>3</sup> Kansas City drivers testified that they had never encountered drivers from the Employer's Houston or Burleson terminals at "new car" dealership customers, and had only rarely encountered Houston or Burleson drivers at an auction site.

In regard to driver interchange, the Employer asserted that there are two scenarios in which employees from the various facilities may be temporarily transferred to assist at another facility; 1) during a "push," or 2) when a backlog is created at a facility due to inclement weather.

A "push" occurs when a customer seeks to move a large number of vehicles at a particular time. The Employer asserts that this occurs approximately twice a year; when new car models are released and at the end of the year. The Kansas City drivers who appeared as witnesses at the hearing testified that they had never been sent to either Texas location to assist with a "push," and had seen Texas drivers in Kansas City only a few times.

The Employer asserts that a backlog may be created, especially in Kansas City, as a result of inclement weather resulting in employees from Houston or Burleson being temporarily transferred to Kansas City to assist in delivering vehicles. Despite the Employer's assertion, the Kansas City drivers who testified at the hearing stated that they had never witnessed Houston or Burleson drivers being transferred to Kansas City as a result of weather. The Employer produced no documentary evidence to support its assertions that there was occasional interchange of drivers between its terminals.

At the hearing the Employer submitted evidence showing that there had been two permanent transfers between facilities. Driver Raymond Robinson transferred from Kansas City to Burleson

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<sup>3</sup> The Employer produced a series of documents in an attempt to suggest that drivers from Kansas City may come into contact with drivers from the Employer's other facilities. I afford these documents no weight in establishing contact among employees. First, the documents merely show where drivers have been and do not provide dates or times which might establish contact among employees. Moreover the documents may include information about where owner operators have been, a group that has been specifically excluded from any appropriate unit by all parties. Inasmuch, I do not find that Employer's Exhibits 7 through 10 and Employer's Exhibits 13 and 14 are probative in establishing contact among the Employer's employees.

and driver Dan Hayden transferred from Houston to Kansas City. Both transfers were voluntary and at the request of the employees for personal reasons.

Finally, the Employer submitted a document at trial, Employer's Exhibit 13, which purports to show that on 605 occasions in the past nine months, Kansas City drivers received a dispatch from the Burleson, Texas terminal. This document also shows that in the past nine months Kansas City drivers received in excess of 22,500 dispatches. As a result, the portion of dispatches purportedly originating from Burleson accounts for less than 3% of dispatches received by Kansas City drivers. Moreover, as is discussed further below, this document fails to account for the fact that although dispatches may originate in the Burleson terminal, the dispatches are communicated to the Kansas City driver by the Kansas City terminal manager.

C. Geographical Proximity of the Employer's Facilities

The parties stipulated at the hearing that it is 754 miles between the Kansas City and Houston, Texas facilities, and 559 miles between the Kansas City and Burleson, Texas facilities.

D. Centrality of Control of the Employer's Operations/ Local Autonomy

The Employer's managerial hierarchy includes Chief Executive Officer John Hawkins, Chief Financial Officer Charles Wynkoop III, and Vice-President of Logistics Robert Mitchem. Caroline Goosen is the Human Resource Manager. Hawkins, Wynkoop III and Goosen work in the Burleson facility.<sup>4</sup>

Each of the Employer's three facilities employs its own terminal manager: Deangela Mourland is the terminal Manager of Burleson; Robert Mitchem, in addition to being the Vice President of Logistics, is the terminal manager of Houston; and Joann Wheeler is the terminal manager of Kansas City.

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<sup>4</sup> The parties did not stipulate that these individuals possess 2(11) supervisory or 2(13) agency status, however based on their titles and the record evidence of their duties, I find that Hawkins, Wynkoop III, Mitchem and Goosen are excluded from the unit as supervisors and agents of the Employer.

In addition to Joann Wheeler, the Kansas City facility employs an Assistant Terminal Manager, Emmett Rocha. The parties stipulated at hearing that Wheeler and Rocha have the authority to effectively recommend that employees be hired, fired, and disciplined, and they are supervisors within the meaning of Section 2(11) of the National Labor Relations Act. The parties further stipulated that Wheeler and Rocha should be excluded from any unit found appropriate as statutory supervisors. Based on the parties' stipulation, I will exclude them from the unit found appropriate.

The terminal managers are responsible for the day-to-day duties at each of the three facilities. At the Kansas City facility the terminal manager and assistant terminal manager, among other things: receive data from the customers; build "new car" loads and dispatch those job assignment to the drivers; dispatch "auction" loads to drivers<sup>5</sup>; monitor employee attendance; independently issue verbal discipline and recommend and administer all other discipline; prepare and perform employee evaluations making wage recommendations based thereon; perform quarterly safety inspections with the drivers; and receive completed paperwork from the drivers.

The Employer's corporate office in Burleson, Texas retains control over some administrative, human resources and record keeping functions. The Employer's corporate office retains the right to approve discipline in excess of a verbal warning and employee evaluations and pay increases. The corporate office also administers the Employer's drug testing policy and handles all insurance or accident claims. The corporate office processes payroll, and handles all employee benefits. All paperwork is stored at the corporate office, including employees' personnel files.

Included in those duties performed by corporate are certain safety and human resources training functions. CFO Charles Wynkoop and Human Resources Manager Caroline Goosen travel

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<sup>5</sup> At hearing, there was testimony that all auction load dispatches originate from Burleson, Texas, however those dispatches are then transmitted to the Kansas City terminal manager, who in turn dispatches the driver.

to the three terminals to administer or meet on employee benefits. In addition, Safety Operations Director Bill Wynn and Driver Training Coordinator Fred Riggan travel to each facility to conduct meetings on safety related topics.<sup>6</sup>

E. Similarity of Employees Skills, Job Functions and Working Conditions

All drivers at the Employer's three facilities deliver new and auction vehicles to customers. Drivers must possess a commercial driver's license (CDL). A driver's typical day at the Kansas City terminal<sup>7</sup> begins by receiving a dispatch from the terminal manager. The paperwork associated with the dispatch includes a trip sheet which indicates what vehicles are to be delivered and their location at the terminal, as well as delivery receipts for signature by the customer upon delivery.

Once the driver has loaded the automobiles slated for delivery onto the truck, he proceeds to drive to the customer's location. The driver's outbound load is referred to as a "head haul." A driver's head haul may contain one or more stops at various customer facilities. After the driver has delivered all automobiles on the head haul, he may receive a dispatch to obtain vehicles to bring back to the Kansas City facility. This is commonly referred to as a "back haul." Back hauls appear to occur irregularly at best. If the dispatch for the back haul is for auction vehicles, the dispatch will have originated in Burleson, Texas, however record evidence indicates that even if the dispatch originated in Burleson it is communicated to the driver by Kansas City's terminal manager or assistant terminal manager. Once a driver returns to the Kansas City facility, all paperwork is turned in to the terminal manager.

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<sup>6</sup> At the hearing the Employer's CEO John Hawkins asserted that if a driver from one terminal was near another terminal when a safety meeting was scheduled, that driver might attend the safety meeting at the other terminal. The Employer produced no documentary evidence that this has ever happened despite testimony that such evidence would exist. Inasmuch, I do not accord the Employer's assertion much weight.

<sup>7</sup> It might be assumed that the Employer's drivers in Burleson and Houston involve similar scenarios, however there was no direct evidence regarding drivers in the aforementioned locations.

### III. ANALYSIS

All drivers at the Employer's three facilities are paid based upon a formula which is based on the number of miles driven as well as the number of cars delivered. The driver's base rate of pay is affected, however by their skill level and abilities as measured in their annual performance appraisal, which is prepared by the terminal manager. Drivers at the three facilities receive the same benefits, such as health insurance, sick leave, and a 401(k) account.

Kansas City drivers typically receive driver training at the Kansas City facility either from Driver Training Coordinator Fred Riggan or from a fellow Kansas City driver. If a newly hired driver has no prior car delivery experience, the driver may be sent to the Employer's corporate office in Burleson, Texas for a more extensive 30-day training course. It is not clear how often this more extensive training is required.

The Employer issues employee handbooks and procedural handbooks to drivers at all three facilities.<sup>8</sup> If there are changes to the Employer's policies, those changes are communicated to employees by the terminal manager.

If an employee needs to request sick or vacation leave they contact their terminal manager. If an employee has an issue with their truck, they also contact their terminal manager. While at one time repairs to trucks may have been performed at the Employer's Burleson facility, since May of 2009 all repairs have been performed by independent contractors located near each terminal facility.<sup>9</sup>

#### F. Collective Bargaining History

There is no history of collective bargaining among any of the Employer's employees.

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<sup>8</sup> There was some confusion at hearing as to whether employees at the different facilities had all been issued the most recent employee handbooks, with employees at Kansas City apparently being issued a handbook with a different revision date than those received by employees in Texas.

<sup>9</sup> There was testimony at the hearing that Kansas City driver Demetrius Brown had taken a truck to Burleson approximately five times since 2001 for repairs, and that on at least two occasions was dispatched back to Kansas City by Burleson with loads. For approximately the last year, however, all truck maintenance is performed locally. Inasmuch, I will not rely on Brown's testimony regarding his trips to Burleson for maintenance or subsequent dispatches, as this is not a viable scenario for current and future employees.



It is well established that even when an employer has a multiple-facility operation, a single-facility is the presumptively appropriate unit for collective bargaining. *Bowie Hall Trucking*, 290 NLRB, 41, 42 (1988), citing *Sol's*, 272 NLRB 621 (1983). This presumption may be rebutted only by a showing that the single-facility unit has been so effectively merged into the broader unit, or is so functionally integrated that it no longer retains its separate identity. *J&L Plate*, 310 NLRB 429 (1993); *Globe Furniture Rentals*, 298 NLRB 288 (1990); *Dixie Belle Mills*, 139 NLRB 629, 631 (1962). The party opposing the single-facility unit bears the burden of rebutting its appropriateness. *Jerry's Chevrolet, Cadillac*, 344 NLRB 689 (2005); *Red Lobster*, 300 NLRB 903, 910-911 (1990); *Esco Corp.*, 298 NLRB 837, 839 (1990).

In deciding whether the presumption has been rebutted, the Board considers such factors as the degree of employee contact and interchange (particularly temporary transfers); the geographic proximity of the facilities; centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of employees' skills, job functions, and working conditions; and the bargaining history if any. *Budget Rent A Car Systems, Inc.*, 337 NLRB 884, 885 (2002); *Jerry's Chevrolet*, *supra*; *Bowie Hall Trucking*, *supra* at 42.

The Employer, in the instant case, in seeking to rebut the single-facility presumption, relies primarily on what it argues is the high degree of centralization among the three facilities and lack of autonomy at the Kansas City facility. The Employer cites *Jerry's Chevrolet*, *supra*, in support of its position. The Employer's reliance on *Jerry's Chevrolet* is misplaced. In *Jerry's Chevrolet*, the Board based its decision, in part, on the fact that the four facilities in question lay "contiguously within 1000 feet of each other," that the employer's president handled the day-to-day operations of all four facilities, that the president was on premises at each of the facilities four out of five days a week, and that the managers at each facility had no authority to discipline employees. *Jerry's*

*Chevrolet* at 689. These facts are inapposite to the instant case. In the instant case, the Employer's facilities are hundreds of miles apart, the separate terminal managers are responsible for the day-to-day running of their facilities, corporate management has only a sporadic and infrequent presence at the facility, and terminal managers have the authority to independently verbally discipline employees.

Contrary to the Employer's argument, based on the facts presented, I find a high degree of autonomy at the Kansas City facility. See *First Security Services Corp.*, 329 NLRB 235, 237 (1999). The Kansas City terminal manager and assistant terminal manager are in charge of all the day-to-day duties of the facility, creating and distributing job assignments, approving time requests, performing inspections and evaluations and issuing discipline or effectively recommending the same. While the evidence supports that some of the Employer's administrative, human resources and record keeping functions are centralized, I do not find the degree of centralization sufficient to divest the Kansas City facility of its local autonomy.

In addition to the asserted centralization, the Employer attempts to argue that the contact and interchange among the drivers at the three facilities warrants a finding against the single-facility presumption. The Board has consistently afforded considerable weight to employee interchange when assessing whether the single-facility presumption has been rebutted, calling it a "critical factor." *Id* at 236. See also *Budget Rent A Car, supra*, at 885. The evidence adduced at hearing herein, however is insufficient to rebut the single-facility presumption. Evidence of contact among employees at separate facilities was rare, occurring only a few times a year. Moreover, temporary transfers, which the Board finds particularly important, occur infrequently at best; perhaps once or twice a year during a push. *Id* at 884. There was evidence of only two permanent transfers, which were at the request of the employees. The Board finds that transfers for personal convenience are of

“limited significance” for the purposes of a single-facility analysis. *First Security, supra*, at 237.

Finally the Employer’s reliance on dispatches originating from the Burleson terminal is unconvincing as they account for a very small percentage, apparently less than three percent, of Kansas City drivers’ dispatches. In *First Security supra*, the Board found interchange at a rate of 5% to be insignificant interchange, and insufficient to strip a facility of its separate identity.

The Employer urges that the distance between the facilities should be given little weight as the Employer is engaged in an “inherently mobile” endeavor. The Employer fails to recognize, however, that while drivers do spend a considerable amount of time away from the facility, the Kansas City facility is the driver’s base from which they receive the majority of their instructions, and interact with almost exclusively. In addition, the Board has found that where there is a lack of interchange, such as the case at hand, geographic separation becomes more significant. *Bowie Hall Trucking, supra*, at 43.

It is conceded that there is a high degree of similarity of skill between the employees at the various facilities and they work under similar conditions. However, I find that when all factors are considered together, the lack of significant interchange, the distance between facilities, and the degree of local autonomy, outweighs other factors such as the centralization of certain administrative, human resources and record keeping functions as well as the similarity of employee skill and working conditions in finding a single-facility unit appropriate. For the reasons outlined above, I conclude that the Employer has failed to rebut the presumptive appropriateness of the single-facility unit, and that the exclusion of the Houston, and Burleson, Texas locations does not render the petitioned-for unit inappropriate, especially where the presumptively appropriate unit guarantees employees the greatest freedom in exercising the rights guaranteed under the Act.

*Kalamazoo Paper Box Corp.*, 136 NLRB 134, 139 (1969). *Manor Healthcare Corp.*, 285 NLRB 224 (1987).

#### **IV. DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL NO. 41.

## **V. ELECTION NOTICES**

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

## **VII. LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director for Region 17 within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make this list available to all parties to the election.

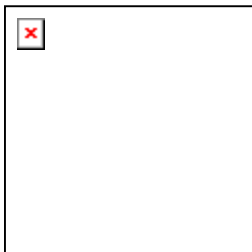
In order to be timely filed, such list must be received in the Regional Office, Suite 100, 8600 Farley, Overland Park, Kansas 66212, on or before May 13, 2010. No extension of time to file this

list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two copies, unless the list is to be submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall by department, etc.) If you have questions, please contact the Regional Office.

### **VIII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m. (ET) on May 20, 2010. The request may be filed electronically through E-Gov on the Agency's website, [www.nlr.gov](http://www.nlr.gov), but may not be filed by facsimile.

SIGNED at Overland Park, Kansas, this 6<sup>th</sup> day of May 2010.



/s/ Daniel L. Hubbel

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